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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 SERGIO DIAZ,) No. CV 11-01590-DDP (VBK)
12)
13 Plaintiff,) ORDER RE DISMISSAL WITH LEAVE TO
14) AMEND
15 v.)
16)
17 L.A. COUNTY SHERIFF'S DEPT.,)
18 et al.,)
19 Defendants.)
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18 Pro se prisoner Sergio Diaz (hereinafter referred to as
19 "Plaintiff") filed a Civil Rights Complaint pursuant to 42 U.S.C. §
20 1983 on March 11, 2011, pursuant to the Court's Order re Leave to File
21 Action without Prepayment of Full Filing Fee. Plaintiff has named as
22 Defendants Captain Victor Trujillo, Sheriff Leroy Baca, Mayor Antonio
23 Villaraigosa, William T. Fujioka and Unknown Deputies, Sergeants, and
24 Lieutenants in their individual capacities.
25

26 **STATEMENT OF FACTS**

27 Plaintiff alleges on May 26, 2009 at the North County
28 Correctional Facility he was punched, kicked and tazed during a

1 contraband watch between 3:00 p.m. and 12:00 a.m. (Complaint at 5.)
2 Plaintiff alleges that unknown deputies left him naked in his cell
3 while other inmates could watch, which was humiliating to him.
4 Plaintiff alleges that unknown deputies watched as Plaintiff was
5 beaten and tazed. Plaintiff was left in the tank for an hour without
6 any medical care. Plaintiff was sent back to his dorm among dirty
7 walls and bunks which can contain "gangrene" or "staphylococcus"
8 infections. Plaintiff alleges he has a documented scar on his back
9 from the tazing incident. Plaintiff alleges the deputies did not
10 document this incident and told Plaintiff to keep his mouth shut or
11 they would taze him again. (Complaint at 5.)

12 Plaintiff alleges that Defendants Captain Victor Trujillo and
13 other unknown lieutenants and sergeants violated his Fourteenth
14 Amendment rights by failing to train and supervise the deputies,
15 lieutenants and sergeants. Plaintiff alleges that unknown deputies
16 violated his Fourth and Fourteenth Amendment rights by forcibly
17 exposing Plaintiff's nude body to strangers, therefore violating
18 Plaintiff's right to due process and privacy. Plaintiff alleges that
19 his Fourth, Eighth and Fourteenth Amendment rights were violated by
20 the Defendants use of excessive force. (Complaint at 5.)

21 Plaintiff alleges that Defendant Sheriff Leroy Baca violated his
22 Fourth and Fourteenth Amendment rights by failing to train and
23 supervise his captain, lieutenants and sergeants and deputies "whom
24 abused a policy, used excessive force, failed to document an incident
25 properly and failed to provide adequate health care." (Complaint at
26 7.) Plaintiff alleges that Defendant Antonio Villaraigosa violated
27 his Fourteenth Amendment rights by failing to supervise the City of
28 Los Angeles. (Id.) Plaintiff alleges that Defendant William T.

1 Fujioka violated his Fourteenth Amendment rights by failing to
2 supervise the County of Los Angeles. (Id.)

3 Plaintiff seeks compensatory and punitive damages against
4 Defendants. (Complaint at 8.)

5
6 **STANDARD OF REVIEW**

7 Because Plaintiff is seeking to proceed in forma pauperis, the
8 Court shall review such a complaint "as soon as practicable after
9 docketing." Pursuant to 28 U.S.C. § 1915(e)(2), the District Court is
10 required to dismiss a complaint if the Court finds that the complaint
11 (1) is legally frivolous or malicious, (2) fails to state a claim upon
12 which relief may be granted, or (3) seeks monetary relief from a
13 defendant immune from such relief. 28 U.S.C. § 1915(e)(2)(B) (re: all
14 in forma pauperis complaints).

15 A complaint may also be dismissed for lack of subject matter
16 jurisdiction, pursuant to F.R.Civ.P. 12(b)(1). Neitzke v. Williams,
17 490 U.S. 319, 327 n.6, 109 S.Ct. 1827 (1989)(unanimous
18 decision)(patently insubstantial complaint may be dismissed under Rule
19 12(b)(1) for lack of subject matter jurisdiction. When considering a
20 dismissal, a Court must accept as true all allegations and material
21 facts and must construe those facts in a light most favorable to the
22 plaintiff. Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000).
23 However, a "court [is not] required to accept as true allegations that
24 are merely conclusory, unwarranted deductions of fact, or unreasonable
25 inferences." Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th
26 Cir. 2001). Nor is a Court "bound to accept as true a legal
27 conclusion couched as a factual allegation." Ashcroft v. Iqbal, ____
28 U.S. ____, 129 S.Ct. 1937, 1949-50, 173 L.Ed.2d 868 (2009).

1 "To survive a motion to dismiss, a complaint must contain
 2 sufficient factual matter, accepted as true, to 'state a claim to
 3 relief that is plausible on its face.'" Iqbal, 129 S.Ct. at 1949
 4 (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct.
 5 1955 (2007)). "A claim has facial plausibility when the plaintiff
 6 pleads factual content that allows the Court to draw the reasonable
 7 inference that the defendant is liable for the misconduct alleged."
 8 Iqbal, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009)(citing Twombly,
 9 550 U.S. at 556.) "The plausibility standard is not akin to a
 10 'probability requirement,' but it asks for more than a sheer
 11 possibility that a defendant acted unlawfully." (Id.) Although a
 12 complaint need not include "'detailed factual allegations,' ... [a]
 13 pleading that offers 'labels and conclusions' or 'a formulaic
 14 recitation of the elements of the cause of action will not do.'" Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). The
 15 Complaint must contain "factual content that allows the court to draw
 16 the reasonable inference that the defendant is liable for the
 17 misconduct alleged." Iqbal, 129 S.Ct. at 1949. "[W]here the well-
 18 pleaded facts do not permit the court to infer more than the mere
 19 possibility of misconduct, the complaint has alleged - but it has not
 20 'show[n]' - 'that the pleader is entitled to relief.'" (Id. at 1950
 21 [quoting Fed.R.Civ.P. 8(a)(2) (internal brackets omitted)].

23 In civil rights cases in which the Plaintiff appears pro se, the
 24 pleadings must be construed liberally, so as to afford the plaintiff
 25 the benefit of any doubt as to the potential validity of the claims
 26 asserted. Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 623
 27 (9th Cir. 1988). If, despite such liberal construction, the Court
 28 finds that the complaint should be dismissed for failure to state a

1 claim, the Court has the discretion to dismiss the complaint with or
2 without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th
3 Cir. 2000). A pro se litigant should be given leave to amend, unless
4 it is clear that the deficiencies of the complaint cannot be cured by
5 amendment. Lopez, 203 F.3d at 1130-31; Cato v. United States, 70 F.3d
6 1103, 1106 (9th Cir. 1995); Noll v. Carlson, 809 F.2d 1446, 1448 (9th
7 Cir. 1987).

8 9 DISCUSSION

10 For all of the following reasons, the Complaint should be
11 dismissed with leave to amend.

12 13 A. Section 1983 Requirements.

14 In order to state a claim under section 1983, a plaintiff must
15 allege that: (1) the defendants were acting under color of state law
16 at the time the complained of acts were committed; and (2) the
17 defendants' conduct deprived plaintiff of rights, privileges, or
18 immunities secured by the Constitution or laws of the United States.
19 West v. Atkins, 487 U.S. 42, 108 S.Ct. 2250 (1988); Karim-Panahi v.
20 Los Angeles Police Dept., 839 F.2d 621, 624 (9th Cir. 1988); Haygood
21 v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985) (en banc), cert.
22 denied, 478 U.S. 1020 (1986). Liability under section 1983 is
23 predicated upon an affirmative link or connection between the
24 defendants' actions and the claimed deprivations. See Rizzo v. Goode,
25 423 U.S. 362, 372-73, 96 S.Ct. 598 (1976); May v. Enomoto, 633 F.2d
26 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th
27 Cir. 1978).

28 A person deprives another of a constitutional right,

1 where that person "does an affirmative act, participates in
2 another's affirmative acts, or omits to perform an act which
3 [that person] is legally required to do that causes the
4 deprivation of which complaint is made." [citation] Indeed,
5 the "requisite causal connection can be established not only
6 by some kind of direct personal participation in the
7 deprivation, but also by setting in motion a series of acts
8 by others which the actor knows or reasonably should know
9 would cause others to inflict the constitutional injury."

10 Johnson v. Duffy, 588 F.2d at 743-44.

11
12 Here, Plaintiff names Defendants Mayor Villaraigosa and William
13 T. Fujioka and alleges that they acted under color of state law
14 because he is Mayor and C.E.O. respectively. Plaintiff has set forth
15 conclusory allegations without any factual support to state a claim
16 against Defendants Mayor Villaraigosa and William T. Fujioka.

17
18 **B. Plaintiff's Individual Capacity § 1983 Claims Against**
19 **Defendant Sheriff Baca Are Not Supported by Any Admissible**
20 **Evidence.**

21 Plaintiff's claims against Defendant Sheriff Leroy Baca are in
22 his individual capacity. An individual defendant is not liable on a
23 civil rights claim unless the facts establish the defendant's personal
24 involvement in the constitutional deprivation or a causal connection
25 between the defendant's wrongful conduct and the alleged
26 constitutional deprivation. See Hansen v. Black, 885 F.2d 642, 646
27 (9th Cir. 1984); Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978).
28 Plaintiff may not sue Defendant Sheriff Baca or any supervisor on a

1 theory that a supervisor is liable for the acts of his subordinates.
2 See Polk County v. Dodson, 454 U.S. 312, 325, 102 S.Ct. 445 (1981);
3 Gibson v. County of Washoe, Nev., 290 F.3d 1175, 1185 (9th Cir. 2002),
4 cert. denied, 537 U.S. 1106, 123 S.Ct. 872 (2003); Redman v. County of
5 San Diego, 942 F.2d 1435, 1443-47 (9th Cir. 1991), cert. denied, 502
6 U.S. 1074 (1992)(supervisory personnel generally are not liable under
7 42 U.S.C. § 1983 on any theory of respondeat superior or vicarious
8 liability in the absence of a state law imposing such liability. A
9 supervisory official may be liable under § 1983 only if he or she was
10 personally involved in the constitutional deprivation, or if there was
11 a sufficient causal connection between the supervisor's wrongful
12 conduct and the constitutional violation.); see also Ashcroft v.
13 Iqbal, ___ U.S. ___, 129 S.Ct. 1937, 1948 (2009)(supervisory personnel
14 not individually liable under section 1983 on the theory of respondeat
15 superior or supervisory liability in absence of state law imposing
16 such liability).

17 Here, Plaintiff has not alleged facts nor is there any evidence
18 indicating that Defendant Sheriff Baca was personally involved in the
19 alleged denial of Plaintiff's rights. Accordingly, Plaintiff has
20 failed to state a claim against Defendant Sheriff Baca in his
21 individual capacity.

22 23 **C. Supervisory Liability.**

24 Liability may be imposed on an individual defendant under § 1983
25 only if the plaintiff can show that the defendant proximately caused
26 the deprivations of his federally protected rights of which he
27 complains. Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris
28 v. City of Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). Respondeat

1 superior is not a sufficient basis for imposing liability under §
2 1983. Monell v. New York City Dept. of Social Services, 436 U.S. 658,
3 663-64 n. 7 (1978). State officials are not subject to suit under §
4 1983 unless they play an affirmative part in the alleged deprivation.
5 King v. Atiyeh, 814 F.2d 565, 568 (9th Cir. 1987).

6 In order to allege facts sufficient to show a jurisdictional
7 basis for imposing liability, see Franklin v. Murphy, 745 F.2d 1221,
8 1234 (9th Cir. 1984), Plaintiff must allege facts to show that the
9 Defendant proximately caused the deprivation of rights of which
10 Plaintiff complains, or that Defendant in a supervisory capacity
11 failed to properly train or supervise personnel resulting in the
12 alleged deprivation, [that the alleged deprivation resulted from
13 official policy or custom for which Defendant was responsible], or
14 that Defendant knew of the alleged misconduct and failed to act to
15 prevent future misconduct.

16 A plaintiff "must allege facts, not simply conclusions, that show
17 an individual was personally involved in the deprivation of his civil
18 rights." Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998),
19 cert. denied, 525 U.S. 1154, 119 S.Ct. 1058 (1999); see Iqbal, 129
20 S.Ct. at 1950 (stating that a complaint must contain more than legal
21 conclusions to withstand dismissal for failure to state a claim).
22 With an Eighth Amendment excessive force claim, the "core judicial
23 inquiry" is "whether force is applied in a good faith effort to
24 maintain or restore discipline, or maliciously and sadistically to
25 cause harm." Wilkins v. Gaddy, ____ U.S. ____, 130 S.Ct. 1175, 1178
26 (2010)(per curiam)(quoting Hudson v. McMillian, 503 U.S. 1, 7, 1125
27 S.Ct. 945 (1992)). Plaintiff is granted leave to allege conclusory
28 fact explaining what each Defendant did or failed to do that amounts

1 to the use of excessive force in violation of the Eighth Amendment.

2
3 **D. Plaintiff must Exhaust His Administrative Remedies Pursuant**
4 **To 42 U.S.C. § 1997e(a).**

5 Since this action was filed after the enactment of the Prison
6 Litigation Reform Act of 1995 ("PLRA"), it is governed by the
7 provisions of the PLRA. The PLRA amended 42 U.S.C. § 1997e(a) to
8 provide as follows:

9 "[No action shall be brought with respect to prison
10 conditions under Section 1983 of this title, or any other
11 Federal law, by a prisoner confined in any jail, prison, or
12 other correctional facility until such administrative
13 remedies as are available are exhausted."
14

15 The PLRA defined the phrase "civil action brought with respect to
16 prison conditions" as meaning "any civil proceeding arising under
17 federal law with respect to the conditions of confinement or the
18 effects of actions by government officials on the lives of persons
19 confined in prison," other than "habeas proceedings challenging the
20 fact or duration of confinement in prison." See, 18 U.S.C. §
21 3626(g)(2). In Booth v. Churner, 532 U.S. 731, 121 S. Ct. 1819
22 (2001), the United States Supreme Court held that the PLRA requires
23 administrative exhaustion prior to an inmate filing a civil rights
24 lawsuit even when the grievance process does not permit the award of
25 money damages and an inmate seeks only money damages, as long as the
26 grievance tribunal has authority to take some action in response to an
27 inmate's complaint. See also, Porter v. Nussle, 534 U.S. 516, 122 S.
28 Ct. 983 (2002)(Exhaustion of administrative remedies is required for

1 all prisoner suits seeking redress for prison occurrences, regardless
2 of whether they involve general circumstances of incarceration or
3 particular episodes, and whether they allege Eighth Amendment
4 violations based on use of excessive force or some other wrong).
5 McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002)(per
6 curiam)(PLRA requires district courts to dismiss actions without
7 prejudice where the prisoner failed to exhaust administrative remedies
8 before filing suit).

9 The State of California provides its prisoners the right to
10 appeal administratively "any departmental decision, action, condition
11 or policy perceived by those individuals as adversely affecting their
12 welfare." (California Code of Regulations Title 15, section
13 3084.1(a).) They may also file appeals alleging misconduct by
14 correctional officials. Id., § 3084.1(c). To exhaust available
15 administrative remedies within this system, a prisoner must proceed
16 through several levels of appeal: (1) informal resolution, (2) formal
17 written appeal on a CDC Form 602, (3) second-level appeal to the
18 institution head or designee, and (4) third-level appeal to the
19 Director of CDC or the Director's designate. Barry v. Ratelle, 985
20 F.Supp. 1235, 1237 (S.D. Cal. 1997)(citing Cal. Code. Reg. Title 15,
21 section 3084.5). A final decision from the Director's level of review
22 satisfies the exhaustion requirement in § 1997(e)(a). Id. at 1237-38;
23 see Alexandroai v. California Department of Corrections, 985 F.Supp.
24 968, 969-70 (S.D. Cal. 1997).

25 The Supreme Court in Booth explicitly required that the prisoner
26 "complete a prison administrative process" under the PLRA version of
27 § 1997(e). Booth v. Churner, 532 U.S. 731 at 739.

28 A prisoner's grievance must address all claims being brought and

1 advise correctional authorities by description of all persons against
2 whom claims might be brought. Irvin v. Zamora, 161 F.Supp.2d 1125,
3 1127 (S.D. Cal. 2001). Here, from the face of the Complaint it does
4 not appear that Plaintiff exhausted his administrative remedies.

5
6 **CONCLUSION AND ORDER**

7 In an abundance of caution, Plaintiff will be afforded an
8 opportunity to amend his Complaint to attempt to overcome the defects
9 discussed above, and to allege a cognizable constitutional claim
10 Accordingly, **IT IS HEREBY ORDERED:** (1) Plaintiff's Complaint is
11 dismissed with leave to amend; and (2) Plaintiff is granted 30 days
12 from the date of this memorandum and order within which to file a
13 "First Amended Complaint." The First Amended Complaint must be
14 complete within itself and shall not incorporate by reference and
15 portion of the original Complaint. Plaintiff may not add new parties
16 without leave of the Court. Failure to comply with the requirements
17 set forth in this Memorandum and Order may result in a recommendation
18 that this action be dismissed with prejudice.

19
20 DATED: April 15, 2011

_____/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE